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10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13

14 UNITED STATES OF AMERICA,  
15 Plaintiff,  
16 v.  
17 ADAM SHAFI,  
18 Defendant.

Case No.: CR 15-00582 WHO

**DEFENDANT'S SENTENCING  
MEMORANDUM**

**Court:** Courtroom 2, 17th Floor  
**Hearing Date:** March 21, 2019  
**Hearing Time:** 1:30 p.m.

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## **INTRODUCTION**

Mr. Shafi's arrest on July 3, 2015 was both the worst and best thing that has ever happened to him. Armed FBI agents entered their home in Fremont to take Mr. Shafi away to jail, where he would remain for almost three and a half years. It was the culmination of nine months of household tension borne from the fallout of Mr. Shafi's foolish decision to leave his family during a vacation to Cairo in order to go to Istanbul in 2014. That major mistake led to an FBI investigation, a FISA wiretap, a jury trial resulting in a mistrial, and ultimately a felony conviction. But it also brought the Shafi family closer together, helped Mr. Shafi realize his privilege was a blessing, not a burden, and brought into focus the mental health problems Mr. Shafi failed to address for too long.

In the aftermath of the arrest, Mr. Shafi and his family have spent countless hours looking backwards, reliving the events of 2014 and 2015 over and over. Since this Court released Mr. Shafi on bail on October 4, 2018, Mr. Shafi and his family have looked forward for the first time in a long time, thinking about school, a career and marriage. This Court told Mr. Shafi when it released him on bail that “I expect that you are going to...prove your parents right...about who you are.” Dkt. 310 at 34:13-14. Mr. Shafi has worked hard to show this Court’s prediction correct. Today, Mr. Shafi has been out of custody for six months without a problem. He is attending weekly counseling sessions that he has found useful and rewarding. He is extremely remorseful for the mistakes he made and “earnestly apologize[s] to your Honor, my family, and the government for my disturbing comments and actions leading up to my arrest and charge 4 years ago.” Exh. A, Letter of Adam Shafi at 1. Most importantly, he has learned from this ordeal.

Mr. Shafi has been harshly and sufficiently punished for his actions and there is no need to stop his treatment and send him back to jail to deter him from committing another crime. He respectfully asks this Court to sentence him to credit for time served of approximately 40 months, followed by three years of supervised release and a \$100 special assessment.

## **STATEMENT OF FACTS**

#### **A. Mr. Shafi's History and Characteristics.**

To understand Mr. Shafi's case, it is crucial to understand the history and characteristics of his father. Salama Shafi was born in Cairo, Egypt in 1953. His father was an imam, or Islamic preacher,

1 and had a total of 11 children in two marriages.  
 2 The Shafi family was poor and Salama realized  
 3 the only way to make a living for himself was to  
 4 leave Cairo and immigrate to the United States.  
 5 In 1980, Salama moved to New York and within  
 6 a year, moved to the Bay Area. He had little  
 7 money to his name but a desire to succeed. He  
 8 went to school, found work in the technology  
 9 sector, and eventually started his own company.  
 10 By the late 1980s, he bought the home he lives in  
 11 today in Fremont. In 1989, Salama married Seham Mansour, a childhood family friend Salama had  
 12 known since they were kids. Seham was in medical school in Cairo and after she graduated, she  
 13 immigrated to the United States with Salama. It is no surprise that the Shafis have an American flag  
 14 flying in their garage because they are the embodiment of the American dream.



Picture of the garage in the Shafi home taken by the FBI on July 3, 2015.

15 Mr. Shafi was born in San Jose in 1993. The Shafis had four other children over the next ten  
 16 years. Mr. Shafi faced the same hurdles and obstacles many teenagers face, particularly as the oldest  
 17 son of immigrants and straddling two different cultures. In 8th grade, in an effort to fit in, he hung  
 18 out with the wrong crowd and started smoking marijuana and drinking alcohol. *See Presentence*  
 19 *Investigation Report (“PSR”)* ¶ 48. That culminated in a juvenile arrest on suspicion of stealing cars,  
 20 though no criminal or juvenile prosecution ensued.

21 In 2007, his parents took Mr. Shafi to see a therapist, explaining they had concerns that he was  
 22 withdrawn and his grades had dropped. *See Exh. B, January 23, 2007 Medical Record.* At a follow  
 23 up session, Mr. Shafi explained to a clinical social worker that he “was bewildered...about what is  
 24 happening in his life.” *See Exh. C, February 7, 2007 Medical Record.* He reported “that things are  
 25 better now” and that his family “are nice and not angry at him anymore.” *Id.* He also stated he  
 26 “would like to come back in and discuss what is happening, as he is feeling uneasy about the future.”  
 27 *Id.* The therapist ultimately diagnosed Mr. Shafi with depressive disorder. *See Exh. D, August 29,*  
 28 *2007 Medical Record.* Despite the diagnosis and his statement in February 2007 that he wanted to



Picture from Mr. Shafi's High School Yearbook.

Nabeel Safi, Abdulla H. Wardak, Zain Wardak, Maha Wardak, Mahdi Wardak, Waheed, Meena Calaimany, Sabeeka Naqvi, Mina Wardak, Marham Wardak, Talooel, Neda Pirooz, Laila Mossadak, Zahra Sanwary, Bisma Ajaz

I continue with counseling, he did not come in for another counselling session. *Id.*

By the time Mr. Shafi entered high school, he looked inward and turned to his religion. Islam gave Mr. Shafi a community and a purpose. He became involved in the Muslim Students Association and served as its president during his junior and senior year. PSR ¶ 38. Mr. Shafi graduated from high

school in 2011 and enrolled at Ohlone Community College in Fremont.

As Mr. Shafi was going through community college, the world was dealing with the unprecedented events of the Arab Spring. In 2011, the resignation of Egyptian President Hosni Mubarak brought great joy to millions of Arabs around the world, particularly Egyptians like the Shafis. Unfortunately, the initial hope of democratization and modernization in the Arab world turned to chaos, as civil wars broke out in Libya and Syria. By 2013, the *New York Times* noted that the United Nations described the Syrian refugee crisis “as the most challenging refugee crisis in a generation—bigger than the one unleashed by the Rwandan genocide and laden with the sectarianism of the Balkan wars.”<sup>1</sup> The news featured constant reports about the plight of Syrian refugees and heartbreaking images of death and destruction.

Amongst all this, by 2013 Mr. Shafi was turning more religious, making sure to pray at the mosque five times a day, and volunteering with Ta’leef Collective in Fremont, a non-profit community gathering place for young Muslims, particularly converts and first generation Muslim Americans.<sup>2</sup> See Exh. E, January 30, 2019 Letter from Diane Stair. But the situation in the Middle

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<sup>1</sup> Norimitsu Onishi, “Syria Seen as Most Dire Refugee Crisis in a Generation,” *New York Times*, Nov. 23, 2013, available at <https://www.nytimes.com/2013/11/24/world/middleeast/syria-seen-as-most-dire-refugee-crisis-in-a-generation.html>.

<sup>2</sup> See Ta’leef Collective, “Our Mission,” (“The Arabic word ‘ta’leef’ means ‘to bring together’, and describes our mission to build community by creating safe spaces for dialogue, education and fellowship. We aim to provide the ideal experience of American Islam, that is both culturally relevant and integral to individual and collective growth.”) available at <https://www.taleefcollective.org/our-mission/>.

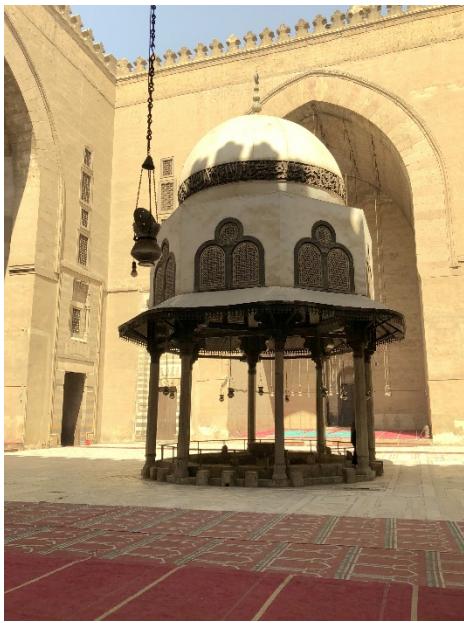
1 East generally and the Syrian refugee crisis specifically, took its toll on him. He was taking fewer  
 2 classes and getting worse grades. *See* Exh. F, Ohlone College Transcript; *see also* PSR ¶ 49 (noting  
 3 “cumulative grade point average was 2.5”). That combination understandably resulted in tension in  
 4 the Shafi home. Salama Shafi was the son of a poor, religious man. Salama had to work hard to  
 5 achieve financial success and security. As the PSR explains, he “has high expectation for his family  
 6 and is clear in his disappointment when those expectations are not met.” PSR ¶ 38. Salama’s oldest  
 7 son had the exact opposite set of ambitions, focusing more on his religion and rejecting goals of  
 8 material and financial success.

9       The differences between the two would manifest itself in the  
 10 Shafi family’s annual month long vacation to Egypt to visit  
 11 family. Part of the trip involved going to Sharm el Sheikh, a well-  
 12 known resort town on the Red Sea, famous with Europeans and  
 13 other tourists because of its clean beaches, and scuba diving and  
 14 snorkeling. But Mr. Shafi wanted to spend time with more distant  
 15 family members who lived in humble farming villages north of  
 16 Cairo. On the family’s 2013 trip to Egypt, Mr. Shafi spent two  
 17 days with Salama’s cousin, Anwar, in Kom El Nour, a village 56  
 18 miles north of Cairo. Anwar lived in a small and dirty two  
 19 bedroom flat, with one room reserved for her cow. Salama was  
 20 mystified but would indulge Mr. Shafi’s wishes. While Salama  
 21 enjoyed socializing and catching up with friends and cousins, Mr. Shafi wanted to spend the entire  
 22 day at historic mosques like the almost 700 year old Sultan Hassan Mosque in old Cairo, a picture of  
 23 which hung in Mr. Shafi’s room.<sup>3</sup> The history and architecture of Sultan Hassan stood in stark  
 24 contrast to the mosque Mr. Shafi attended at home, the Islamic Center in Fremont.

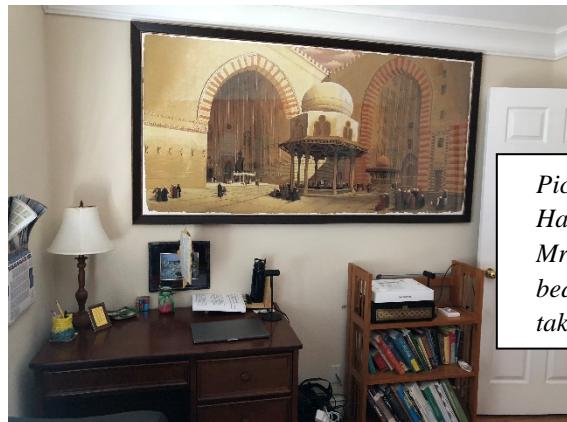


Anwar’s home, which Mr. Shafi visited in 2013. Picture taken March 2018.

25  
 26  
 27       <sup>3</sup> President Obama visited the Sultan Hassan Mosque with then Secretary of State Hillary Clinton in  
 28 2009. *See* CBS News, “Obama in Egypt,” available at <https://www.cbsnews.com/pictures/obama-in-egypt/10/>.



*The Sultan Hassan Mosque in Old Cairo. Picture taken March 2018.*



*Picture of the Sultan Hassan Mosque in Mr. Shafi's bedroom. Picture taken August 2018.*



*March 2015  
Google Street  
View Picture of  
Islamic Center of  
Fremont.*

Ultimately, an uncomfortable dynamic developed between Salama and Mr. Shafi. Salama had worked hard to give Mr. Shafi the luxurious upbringing Salama never had. But Mr. Shafi felt guilty and resentful for the privileges he enjoyed while other Muslims in the Middle East suffered. Mr. Shafi's insistence on praying at the mosque five times a day, including waking up at four or five in the morning for prayers, necessarily meant he slept through the morning and interrupted his work schedule, which frustrated Salama. Mr. Shafi's desire to grow a beard and wear more traditional Islamic clothes made Salama fear that Mr. Shafi would be discriminated against and unhireable. Mr. Shafi felt he needed to escape to a Muslim country, where he could live, work, dress and pray as he pleased.

## **B. The Nature and Circumstances of the Offense.**

By now, this Court is well aware of the events of 2014 and 2015. By 2014, the tensions Mr. Shafi felt were becoming untenable. Mr. Shafi felt enormous pain and grief seeing what was happening in Syria. He was chafing at the restrictions he felt his father was placing on him. Meanwhile, in Syria the terrorist group ISIS had proclaimed a “caliphate.” Mr. Shafi wanted to see for himself the refugee situation and get a firsthand account about ISIS and the other groups fighting in Syria at that time. He decided that when he and his family were in Cairo in 2014 for their family

1 trip, he would fly to Istanbul and meet his friends Abdul Qadar Khan Niazi and Saleem Karim there.  
 2 On August 16, 2014, Mr. Shafi left his family in Cairo, took a taxi to the airport and flew to Istanbul  
 3 by himself. Mr. Niazi landed at the Istanbul airport a few hours later. Mr. Karim was ultimately  
 4 unable to join them because his mother had hid his passport.

5 At the airport, Mr. Shafi and Mr. Niazi spoke with people fleeing  
 6 Syria. What they heard was distressing, confirming Mr. Shafi's fears  
 7 that the groups purporting to protect Syrians were ultimately fighting  
 8 amongst themselves and engaging in barbaric violence, primarily  
 9 towards fellow Muslims. Within hours, Mr. Shafi and Mr. Niazi  
 10 decided to go back home. They bought return tickets to Cairo and San  
 11 Francisco, respectively. They used their last remaining hours in  
 12 Istanbul to visit the Blue Mosque, a historic mosque and popular tourist  
 13 site in Istanbul.

14 In the meantime, Salama Shafi had gone to the U.S. Embassy in  
 15 Cairo to report Mr. Shafi missing. PSR ¶ 9. Salama relayed that Mr.  
 16 Shafi had sent a text message to his brother saying he had gone to  
 17 “protect Muslims.” *Id.* He also told Embassy staff that Mr. Shafi “had been in a bit of a state of  
 18 depression” and “was grieving about the plight of the Muslims in the region.” Dkt. 318 at 66:2-4.

19 Mr. Shafi returned to Cairo on August 18, 2014 and the family returned to San Francisco on  
 20 August 20, 2014. PSR ¶ 9. Upon his arrival to SFO, Mr. Shafi was interviewed by Customs and  
 21 Border Protection agents at SFO. On September 4, 2014, Mr. Shafi met with FBI agents at a coffee  
 22 shop and gave more details about his trip to Istanbul, including specific details about the people he  
 23 spoke with there. Mr. Shafi was 21 years old and had neither a lawyer nor his parents with him  
 24 during the interview. By that point, the government had opened an investigation into Mr. Shafi.

25 The trip to Istanbul left an enormous mark on Mr. Shafi. Five days after his meeting with the  
 26 FBI, on September 9, 2014, he saw his doctor and reported feeling depressed. The medical records  
 27 reflected Mr. Shafi had “lost some 7 pounds due to lack of appetite” and had “lack of motivation and  
 28 flat affect.” See Exh. G, September 9, 2014 Medical Record. His doctor recommended he see a



Picture of the Blue  
Mosque taken on August  
17, 2014 by Mr. Shafi.

1 therapist. The Shafi family made appointments for Mr. Shafi to see an Islamic psychiatric counselor  
 2 in the fall of 2014. PSR ¶ 45. But Mr. Shafi did not find the therapy helpful and stopped attending  
 3 after a few sessions. *Id.*

4 The family then tried to deal with Mr. Shafi's depression by enrolling him in Coding Dojo, a  
 5 computer science boot camp program that began in October 2014 and was supposed to end by  
 6 January 30, 2015. PSR ¶ 49. While Mr. Shafi liked the courses, it took him extra time to finish, and  
 7 he did not finish the necessary final exams to complete the course until March 2015. *See* Exh. H,  
 8 June 27, 2016 Letter from Jenna Wolfe. After he finished the courses, his father hired him to work  
 9 for his company. But that resulted in tension too. When Salama asked Mr. Shafi to design a website  
 10 for him, the two got into a disagreement about a picture and Salama refused to pay him. Out of  
 11 anger, Mr. Shafi decided to earn money by selling his belongings on Craigslist, ultimately leading to  
 12 the bank fraud that Mr. Shafi stands convicted of.

13 In April 2015, Mr. Shafi posted his bike for sale on Craigslist for \$800. PSR ¶ 17. He was  
 14 contacted by someone who offered to buy the bike and sent him a check for \$2,200. The person  
 15 instructed Mr. Shafi to deposit the check, keep the money for the bike, and given the rest of the  
 16 money to someone who would come pick up the bike. *Id.* Mr. Shafi received a check paid from  
 17 Setco Services, L.L.C., a title company in Florida. Mr. Shafi was dubious about the check and the  
 18 Google search records show searches for "fake check cleared" and "setco services" on April 16,  
 19 2015. Mr. Shafi decided not to deposit the check but kept it in case he needed to use it at a later date.  
 20 Ultimately, Mr. Shafi worked out his differences with Salama over the website and he was paid for  
 21 the work he completed.

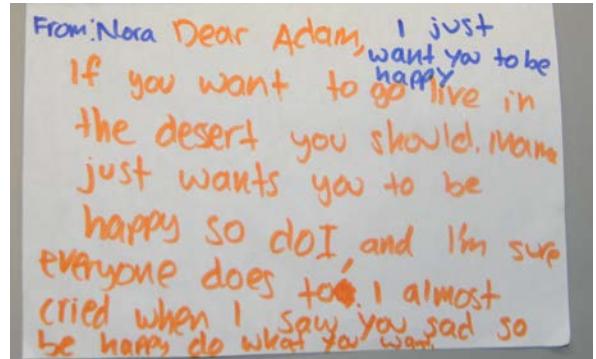
22 But Mr. Shafi's feelings of humiliation, frustration, anger and despair would not abate. He  
 23 knew he was under FBI scrutiny and surveillance, though did not know that the government had been  
 24 intercepting his phone calls since December 2014. He resented the fact he was entirely dependent on  
 25 his parents, living in their house and working for his father. He told Mr. Karim on June 8, 2015, that  
 26 he had told his parents he felt like a "slave until I leave this house." Trial Exh. 023-038.

27 He especially felt hopeless about the messy situation in the Middle East. On June 5, 2015, after  
 28 watching an interview by the leader of the al-Nusrah Front on Al Jazeera, Mr. Shafi felt that he had

1 found a group that was doing things the right way in Syria. But that enamor quickly faded away.  
 2 Three days later, on June 8, 2015, Mr. Shafi told Mr. Karim that he wanted to “go to Death Valley for  
 3 a weekend, just sit and think over there,” Trial Exh. 023-008, that he felt “like just going into the  
 4 desert and just getting a bunch of sleep,” Trial Exh. 023-014, and that he wanted to “move in with  
 5 you when you get that apartment.” Trial Exh. 023-052. There were no online searches for the al  
 6 Nusrah Front or Muhammad al-Joulani after June 5, 2015.

7 Most problematic, Mr. Shafi was becoming increasingly nihilistic. He had often felt suicidal,  
 8 thinking “life wasn’t worth living” and that “he would never be happy or content.” PSR ¶ 44. On  
 9 June 20, 2015, he sent text messages to Mr. Karim about Armin Harcevic, feeling “if there’s really  
 10 nothing I can do I just rather be with him in the cage” so “at least he won’t be alone.” Trial Exh. 144-  
 11 173.<sup>4</sup> He began talking about his own death candidly, lamenting that he had not spilled his own  
 12 blood for Allah, and expressing “jealousy” at someone who had died in Syria. PSR ¶ 10. As Dr.  
 13 Sageman explained, Mr. Shafi “felt very guilty that he’s here in this country, protected, not suffering,  
 14 and all the people in his community are suffering over there,” and Mr. Shafi wanted “to share in the  
 15 suffering.” Dkt. 322 at 718:9-20. Indeed, Mr. Shafi explained to Mr. Karim that he wanted to go  
 16 “through what [Mr. Harcevic’s] going through  
 17 instead of just eating my fancy meals and sleeping in  
 18 my fancy house while he’s in a cage,” and he would  
 19 “feel better dying like that instead of like this.” Trial  
 20 Exh. 144-173. The Shafi family could see something  
 21 was wrong but did not know how to get through to  
 22 Mr. Shafi.

23 On June 28, 2015, Mr. Shafi made the fateful  
 24 mistake that is now—almost four years later—reaching its conclusion: he purchased a one way ticket  
 25 to fly to Istanbul, Turkey. He had no plan at all as to what he would do when he got there. He had  
 26 not made any other travel or lodging arrangements, and told no one that he was leaving. The



Handwritten note from Mr. Shafi's sister Nora, 13 at the time, recovered by FBI during July 3, 2015 search of the Shafi home.

28 <sup>4</sup> Mr. Shafi apparently did not know that Mr. Harcevic had been released from jail on April 30, 2015.  
 See *United States v. Harcevic*, CR 15-00049-CDP (E.D. Mo.), Dkt. No. 153.

1 following day, June 29, 2015, he deposited the Setco Services check he had received in April. PSR ¶  
 2 12. The next day he went to SFO, where he was not allowed to board the flight. After a length  
 3 interrogation by the FBI, he was allowed to leave the airport on BART. The following day, July 1,  
 4 2015, Mr. Shafi explained to Mr. Karim that he had been feeling “miserable” and if he couldn’t help,  
 5 “then the least I can do is be miserable, with them. Like, if I can’t do anything then—then what else  
 6 am I gonna do? Just be happy while they’re just, you know, suffering? At least, if I can’t do anything,  
 7 I’m just gonna be miserable.” Trial Exh. 31-12. On that same day, he deposited the money he  
 8 withdrew back into his bank account. PSR ¶ 14.

9 **C. Court Proceedings.**

10 On July 3, 2015, Mr. Shafi was arrested after a complaint was filed charging him with  
 11 attempting to provide himself to the al-Nusrah Front, in violation of 18 U.S.C. § 2339B, when he  
 12 attempted to fly to Istanbul on June 30, 2015. Dkt. 1. Initially, Mr. Shafi’s case remained under seal  
 13 for five months as his retained attorneys attempted to resolve the case pre-indictment. After  
 14 negotiations broke down, Mr. Shafi was indicted on December 15, 2015. Dkt. 15. On December 22,  
 15 2015, Mr. Shafi had a detention hearing before the Honorable Sallie Kim, who detained him as a  
 16 flight risk. Dkt. 23. This Court affirmed Judge Kim’s detention order on January 14, 2016. Dkt. 41.

17 After two and a half years of pretrial litigation, Mr. Shafi’s jury trial began on August 27, 2018  
 18 and lasted six days. Dkt. 271, 274, 275, 277, 283, 287, 288. The jury heard evidence from fifteen  
 19 government witnesses and four defense witnesses, including two terrorism experts called by the  
 20 government and Mr. Shafi, respectively. The jury deliberated for seven days. Dkt. 290, 291, 292,  
 21 293, 296, 297, 299. On September 19, 2018, the Court declared a mistrial after jurors indicated they  
 22 could not reach a unanimous verdict. Dkt. 299. Polling of the jurors indicated they were hung 8-4 in  
 23 favor of acquittal. Dkt. 305-1 at 2, ¶ 7.

24 On October 4, 2018, the Court ordered Mr. Shafi released on a \$1 million bond secured by his  
 25 parents’ house. Dkt. 308. It adopted stringent release conditions proposed by Pretrial Services,  
 26 ordering Mr. Shafi, among other things, to surrender all travel documents and not reapply for a  
 27 passport, not possess a firearm, remain in the custody of his parents at their home, undergo a  
 28 psychiatric assessment and participate in mental health counseling, not use a computer or possess an

1 Internet enabled cell phone, and be subject to 24/7 GPS monitoring and not leave his home except for  
 2 legal, medical, treatment and court purposes. Dkt. 312. Mr. Shafi was released the following day.  
 3 Dkt. 310-12.

4 As the parties prepared for retrial, on November 26, 2018 the government informed Mr. Shafi it  
 5 intended to file a superseding indictment adding a charge of bank fraud based on the \$2,200 check.  
 6 Within two days, the parties initiated plea negotiations. Within a week, the parties reached a plea  
 7 agreement and Mr. Shafi pleaded guilty to a one count information charging him with bank fraud, in  
 8 violation of 18 U.S.C. § 1344, on December 7, 2018. Dkt. 348. Under the terms of the plea  
 9 agreement, Mr. Shafi agreed to debrief with the FBI, and the U.S. Attorney's Office agreed to dismiss  
 10 the indictment at sentencing. Dkt. 349 at 5, ¶¶ 12, 15. Following entry of the plea, the Court denied  
 11 the government's request to have Mr. Shafi remanded into custody pending sentencing. Dkt. 348.  
 12 Mr. Shafi has complied with all conditions of his pretrial release. PSR ¶ 6.

13 **D. Mr. Shafi's Return Home and Future Goals.**

14 Mr. Shafi's return home after being  
 15 locked in jail for 40 months was a joyous  
 16 occasion. On his first night home, family  
 17 members and friends came to the Shafi home in  
 18 Fremont to celebrate. Ramsey, Mr. Shafi's  
 19 brother, writes "the day Adam returned, the  
 20 word spread faster than we imagined. Our  
 21 house was immediately greeted by over 20  
 22 different cousins and family friends, which  
 23 continued over the entire month." Exh. I,

24 Ramsey Shafi Letter. Mr. Shafi's brother Ismail writes on that night Ismail's three year old son, who  
 25 had only known his uncle Mr. Shafi "through a glass window," "would not leave Adam alone and  
 26 insisted on being by his side until falling asleep the night of his return." Exh. J, Ismail Shafi Letter.

27 Most importantly, Mr. Shafi's parents and siblings have all seen a marked change in not only  
 28 Mr. Shafi, but the entire family. His parents write "Adam has matured a lot. He is more



*The Shafi family on October 5, 2018 after Mr. Shafi was released from jail.*

1 appreciative, more responsible, and more motivated than he was at the time of his arrest.” Exh. K,  
 2 Salama and Seham Shafi Letter. Mr. Shafi’s sister Nora has “noticed how much happier and more  
 3 grateful Adam has been since his return” and that the “house has felt so much more lively ever since  
 4 Adam returned home.” Exh. L, Nora Shafi Letter. Gabriel Shafi writes that Mr. Shafi emerged from  
 5 jail “a more productive and loving person” and his release “has brought life back to our family.”  
 6 Exh. M, Gabriel Shafi Letter.

7 In his letter to the Court, Mr. Shafi acknowledges he made major mistakes and he “earnestly  
 8 apologize[s] to your Honor, my family, and the government for my disturbing comments and actions  
 9 leading up to my arrest and charge 4 years ago.” Exh. A, Adam Shafi Letter at 1. He knows he  
 10 “cannot excuse the volatile way with which I expressed my emotions” and does “not ask that my  
 11 conduct be overlooked.” *Id.* But he hopes the Court, the government and the public “notice my  
 12 remorse and see that I am not what my comments and actions 4 years ago portray me as.” *Id.*

13 Mr. Shafi’s time in jail has changed him. Surrounded by people “who constantly shared stories  
 14 of harsh, lonely lives without resources, means of support, or even family to aid them in fulfilling  
 15 their most basic needs” allowed him to see “the irresponsible, immature, and reckless manner with  
 16 which I dealt with problems at home and in the world.” *Id.* at 2. He feels immense gratitude for the  
 17 support of his family and as he told the probation officer, the criminal case led Mr. Shafi “to  
 18 appreciate his father’s intentions.” PSR ¶ 38.

19 Mr. Shafi is ready to look forward to the next chapter in his life. He is eager to continue his  
 20 education, find work in computer programming and start a family. The counseling and therapy he  
 21 has been attending “has benefited him greatly” and he is interested in continuing treatment in the  
 22 future. PSR ¶ 45. He knows there will be difficulties ahead. His relationship with his father will be  
 23 a constant work in progress. Mr. Shafi will forever be associated with a terrorism charge. Unlike  
 24 2015, however, with the Court’s help Mr. Shafi is now equipped with the tools to “help me better  
 25 understand and manage my emotions.” Exh. A, Adam Shafi Letter at 3. He now sees “the flaws of  
 26 my past hopelessness and will now strive to use the life and opportunities given to me to make the  
 27 world a better place.” *Id.* at 3-4.

28

1                   **ARGUMENT**

2                   Criminal “punishment should fit the offender and not merely the crime.” *Williams v. New*  
 3 *York*, 337 U.S. 241, 247 (1949). That requires “the sentencing judge to consider every convicted  
 4 person as an individual and every case as a unique study in the human failings that sometimes  
 5 mitigate, sometimes magnify, the crime and the punishment to ensue.” *Gall v. United States*, 552  
 6 U.S. 38, 52 (2007) (quotations omitted). The factors detailed in 18 U.S.C. § 3553 (a) assist the Court  
 7 in fulfilling this mandate to make “an individualized assessment of a particular defendant’s  
 8 culpability rather than a mechanistic application of a given sentence to a given category of crime.”  
 9 *United States v. Barker*, 771 F.2d 1362, 1365 (9th Cir. 1985). The sentence recommended in the  
 10 United States Sentencing Guidelines (“U.S.S.G.”) is only one factor for district courts to consider in  
 11 making this judgment, and it may not be weighed more heavily than any other § 3553(a) factor. *Gall*,  
 12 552 U.S. at 50; *see also United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008) (en banc).

13                  Here, a sentence of time served (approximately 40 months) followed by three years of  
 14 supervised release is sufficient, but not greater than necessary to further the goals in § 3553(a).

15                  **A. Seriousness of the Offense, Respect for the Law and Just Punishment.**

16                  The Supreme Court has explained the factors in § 3553(a)(2)(A)—the seriousness of the  
 17 offense,” the need “to promote respect for the law” and “provide just punishment for the offense”—  
 18 are the sentencing rationale of “retribution.” *See Tapia v. United States*, 564 U.S. 319, 326 (2011)  
 19 (“a court may not take account of retribution (the first purpose listed in 3553(a)(2)) when imposing a  
 20 term of supervised release”) (emphasis omitted). “The goal of retribution” is the “interest[] in seeing  
 21 that the offender is repaid for the hurt he caused.” *Kennedy v. Louisiana*, 554 U.S. 407, 442 (2008).  
 22 Yet, the Supreme Court has warned “a sentence of imprisonment may work to promote not respect,  
 23 but derision, of the law if the law is viewed as merely a means to dispense harsh punishment without  
 24 taking into account the real conduct and circumstances involved in sentencing.” *Gall*, 552 U.S. at 54  
 25 (quotations omitted).

26                  The “real conduct and circumstances” here are a constellation of facts—Mr. Shafi’s  
 27 immaturity, the situation in Syria, his unwillingness to address his mental health difficulties and his  
 28 misguided frustration with his parents—resulted in his poor decision to knowingly cash a fraudulent

1 check before he attempted to run away from home and leave the country. As he told the probation  
 2 officer, he “saw the situation in Syria and felt helpless to do something about it. I wanted to escape  
 3 my tense family life and live in a Muslim country. But I went about it all wrong.” PSR ¶ 18. In his  
 4 confusion and despair, Mr. Shafi made offensive and violent comments that were inconsistent with  
 5 his character and for which he is extremely embarrassed and remorseful for making. He explained to  
 6 the probation officer “I’m not a violent person and yet I said disgusting things on the phone which I  
 7 don’t believe then, and certainly don’t believe now.” PSR ¶ 18. In his letter to the Court, he  
 8 elaborates that he is sorry “for my disturbing comments and actions leading up to my arrest and  
 9 charge.” *See* Exh. A, Adam Shafi Letter at 1.

10 Mr. Shafi’s age at the time of the events in this case is a critical factor, as this Court recognized  
 11 when it released Mr. Shafi on bail. *See* Dkt. 310 at 27:14-15 (noting “the age of Mr. Shafi at the  
 12 time, as opposed to today.”); *see also* PSR ¶ 77 (noting factor that warrants a variance is Mr. Shafi’s  
 13 “age”). Mr. Shafi was 21 years old when he left his family in Cairo to fly to Istanbul in 2014; the  
 14 comments on the interpreted phone calls, cashing the fraudulent check and attempting to fly to  
 15 Istanbul again in 2015 all took place when Mr. Shafi was 22 years old.

16 Although people are deemed adults when they turn 18 years old, the U.S. Sentencing  
 17 Commission (“U.S.S.C.”) has recognized neurological research that shows brain development is not  
 18 fully realized in most people until they turn 25 years old. More specifically, researchers have found  
 19 that the prefrontal cortex of the brain—which “is utilized in impulse control, emotional reactions,  
 20 executive function and decision making”—is the last part of the brain to develop. It “is not complete  
 21 by the age of 18...development continues into the 20s” and “most researchers reference 25 as the  
 22 average age at which full development has taken place.”<sup>5</sup> In other words, research shows that the  
 23 brain of a defendant who commits a crime at the age of 21 or 22 is almost as undeveloped as a 16 or  
 24 17-year-old juvenile.

25

26

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27 <sup>5</sup> See Exhibit N, Excerpt of United States Sentencing Commission, “Youthful Offenders in the  
 28 Federal System,” p. 6, 7. The full report is available at  
[http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170525\\_youthful-offenders.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170525_youthful-offenders.pdf).

1       The Supreme Court has recognized that “because juveniles have lessened culpability they are  
 2 less deserving of the most severe punishments.” *Graham v. Florida*, 560 U.S. 48, 68 (2010). Because  
 3 “juveniles have a ‘lack of maturity and an underdeveloped sense of responsibility’; they ‘are more  
 4 vulnerable or susceptible to negative influences and outside pressures, including peer pressure’; and  
 5 their characters are ‘not as well formed.’” *Id.* (quoting *Roper v. Simmons*, 543 U.S. 551, 569-70  
 6 (2005)). While a “juvenile is not absolved of responsibility for his actions...his transgression ‘is not  
 7 as morally reprehensible as that of an adult.’” *Graham*, 560 U.S. at 68 (quoting *Thompson v.  
 8 Oklahoma*, 487 U.S. 815, 835 (1988)).

9       Mr. Shafi was obviously not a juvenile when he made the mistakes that bring him before this  
 10 Court for sentencing. But the neurological research recognized by the Sentencing Commission and  
 11 cited above, suggests that at the time of the conduct that took place in 2014 and 2015 when Mr. Shafi  
 12 was 21 and 22 years old, Mr. Shafi was closer in maturity to a juvenile than the majority of  
 13 defendants sentenced in federal court, who are overwhelmingly older than 25 years old.<sup>6</sup> That  
 14 supports a sentence of time served.

15       A sentence of time served is not a slap on a wrist. Mr. Shafi has paid a heavy price for his  
 16 mistakes. He is a convicted felon. He was incarcerated for more than three years. His name will  
 17 forever be associated with a terrorism prosecution in federal court regardless of the mistrial and  
 18 ultimate conviction for bank fraud. He will likely be on the Terrorist Screening Database and the No  
 19 Fly List. The punishment extends beyond Mr. Shafi himself, onto his family as well. As he told the  
 20 Probation Officer, the company his father “built from the ground up is ruined because the name Shafi  
 21 is associated with a terrorism charge.” PSR ¶ 17. Mr. Shafi has been punished enough; there is no  
 22 need to add additional jail time.

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23  
 24  
 25  
 26       <sup>6</sup> Only 16.5% of defendants sentenced in federal court in Fiscal Year 2017 were between the ages of  
 27 18 and 25. See Exhibit O, United States Sentencing Commission’s 2017 Sourcebook of Federal  
 28 Sentencing Statistics, Table 6, “Age of Offenders in Each Primary Offense Category,” available at  
<https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2017/Table06.pdf>. Mr. Shafi turned 26 years old two months before sentencing, though  
 as the Court is aware, his case has been pending for almost four years.

1      **B. Deterring Criminal Conduct and Protecting the Public.**

2      There is no need to impose additional jail time on Mr. Shafi in order to deter him from  
 3      committing a crime or to protect the public. His letter to the Court demonstrates not only his  
 4      remorse, but the fact that he will not make mistakes like the ones that brought him to Court again.  
 5      Mr. Shafi writes in his letter that he is sorry “for my disturbing comments and actions leading up to  
 6      my arrest and charge 4 years ago.” Exh. A, Adam Shafi Letter at 1. He acknowledges they were a  
 7      poor “response to my mismanaged mental state and stressful circumstances” and that he “never  
 8      intended any of the menacing things I said, especially regarding our soldiers.” *Id.* He does not offer  
 9      any excuses and does “not ask that my conduct be overlooked,” but only that the Court sees “I am not  
 10     what my comments and actions 4 years ago portray me as.” *Id.* Importantly, he explains he has “no  
 11     interest in terrorism or any of its affiliates who wreak havoc wherever they go.” *Id.* at 4.

12     These statements make clear that Mr. Shafi has learned the error of his ways in 2014 and 2015  
 13     and does not need additional time in custody to deter him from committing a crime again in the  
 14     future. This Court need not just take Mr. Shafi’s word for it: his actions and social science research  
 15     confirm that Mr. Shafi is unlikely to commit another crime in the future.

16      **1. Mr. Shafi’s Post-Offense Rehabilitation Demonstrates the 40 Months He Spent in  
 17       Custody Has Been an Effective Deterrent.**

18      The Supreme Court has made clear that “post-offense rehabilitation—particularly in light of its  
 19      tendency to reveal a defendant’s likelihood of future criminal conduct—[is] a critical factor to  
 20      consider in the imposition of a sentence.” *United States v. Trujillo*, 713 F.3d 1003, 1010 (9th Cir.  
 21      2013) (citing *Pepper v. United States*, 562 U.S. 476, 491-93 (2011) and *Gall*, 552 U.S. at 59  
 22      (emphasis added)). Such rehabilitation is “the most up-to-date picture” of a defendant’s history and  
 23      characteristics, which in turn sheds light on whether a defendant will be deterred from committing  
 24      another crime. *Pepper*, 562 U.S. at 492 (quoting 18 U.S.C. § 3553(a)(1)).

25      Mr. Shafi’s conduct since his arrest on July 3, 2015 demonstrates he has realized the error of  
 26      his ways. As this Court commented at the bail hearing, the government “didn’t produce any  
 27      recordings of Mr. Shafi in the 41 months since [his arrest] where he said something similar” to the  
 28      offensive and disgusting comments he made in the summer of 2015 despite having ample recordings

1 of Mr. Shafi's conversations while in jail. *See* Dkt. 310 at 22:1-3; *see also* Dkt. 304 at 5 (noting Mr.  
 2 Shafi had 54 unique visitors in the jail, resulting in 3,400 recordings, between July 3, 2015 and July  
 3 26, 2018).

4 Since Mr. Shafi's release from custody on October 5, 2018 on stringent conditions, including  
 5 location monitoring and home detention, Mr. Shafi has done well. The PSR confirms that Mr. Shafi  
 6 "has complied with all court-ordered conditions of release." PSR ¶ 6. He has not used a computer or  
 7 Internet-enabled smartphone and has had no contact with A.N. or S.K. He is attending weekly  
 8 counseling at the East Bay Community Recovery Project ("EBCRP") in Hayward. PSR ¶ 45-46. As  
 9 required by his plea agreement, he extensively debriefed with the government prior to sentencing.  
 10 *See* Dkt. 349 at 5, ¶ 12.

11 As Mr. Shafi writes in his letter to the Court, he has "spent the last number of months preparing  
 12 for the rest of my life." Exh. A, Adam Shafi Letter at 4. He has been keeping up with his  
 13 correspondence courses and submitting handwritten exams and papers. PSR ¶ 50.<sup>7</sup> Although he  
 14 knows "it will be difficult because of my charge and the publicity surrounding it" to put this case  
 15 behind him, he has "the unwavering support of my family and community" which "will enable me to  
 16 overcome any hurdles and start anew with a bright future." Exh. A, Adam Shafi Letter at 4. Mr.  
 17 Shafi's post-offense rehabilitation demonstrates he is unlikely to commit another crime again.

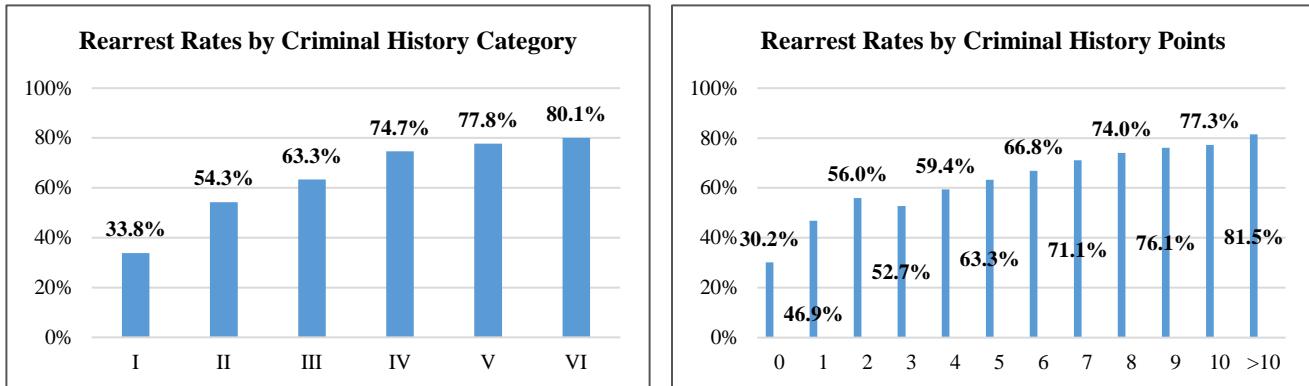
18 **2. Mr. Shafi is at a Significantly Lower Rate of Recidivism as a First Offender.**

19 According to U.S. Sentencing Commission data, as a first offender—someone with no criminal  
 20 convictions or arrests of any kind—Mr. Shafi is at the lowest risk of recidivism of all federal  
 21 defendants. In 2016, the Commission conducted an extensive review of recidivism among federal  
 22 offenders, and found that defendants in criminal history category I had a rearrest rate of 33.8%,  
 23 lowest of all federal offenders. *See* Exhibit Q, Excerpt from U.S. Sentencing Commission,  
 24 "Recidivism Among Federal Offenders: A Comprehensive Overview (2016)".<sup>8</sup> Within individuals  
 25

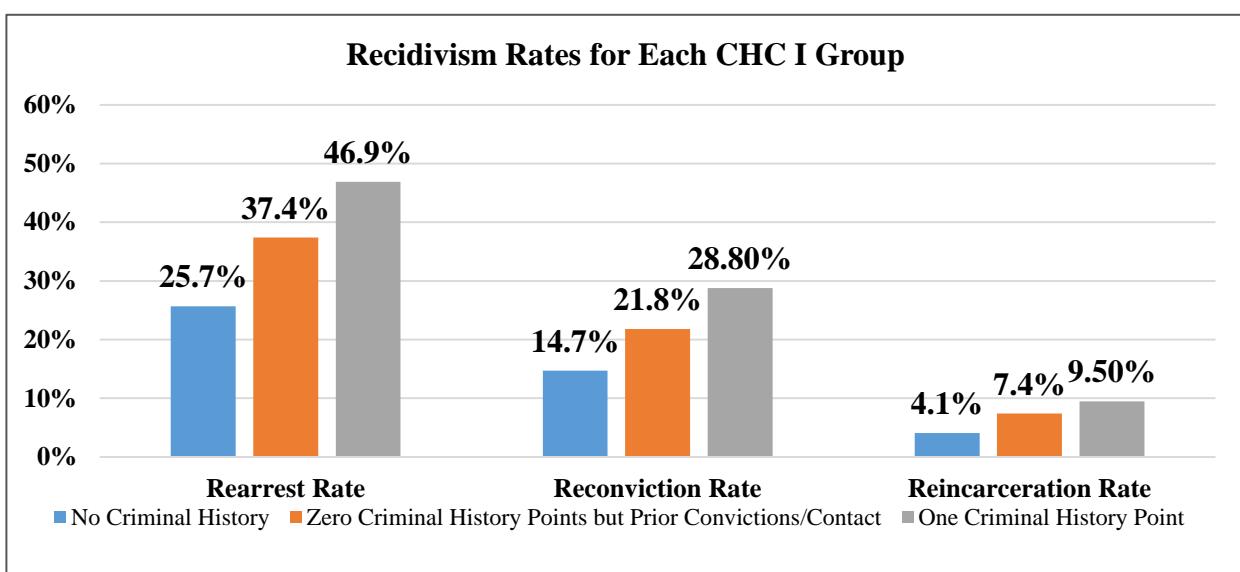
26 <sup>7</sup> As directed by the Court, one of Mr. Shafi's graded term papers is attached as Exhibit P. *See* Dkt.  
 27 348. The red annotations are comments from the instructor. Mr. Shafi received a B+ (score of 44 out  
 of 50, 88%).

28 <sup>8</sup> The full report is available online at [http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism\\_overview.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf).

in criminal history category I, offenders with zero criminal history points as opposed to one criminal history point had an even lower rearrest rate of 30.2%, compared to 46.9% for defendants with one criminal history point. *Id.*



A more recent Sentencing Commission report demonstrates that defendants with no criminal history whatsoever—like Mr. Shafi—had the lowest rates of rearrest, reconviction and reincarceration of all federal defendants: only 25.7% were rearrested, 14.7% reconvicted, and 4.1% reincarcerated. *See Exhibit R, Excerpt of U.S. Sentencing Commission, “Public Data Presentation for First Offenders and Alternatives to Incarceration Amendment,” December, 2016.*<sup>9</sup> Those rates are significantly lower than other defendants in criminal history category I, who nonetheless have some criminal history.



<sup>9</sup> The full presentation slides are available online at [http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20161209/20160109\\_DB\\_alternatives.pdf](http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20161209/20160109_DB_alternatives.pdf).

1       Moreover, recent research has shown that first offenders sentenced to probation in lieu of  
 2 incarceration are less likely to commit another crime in the future. A study published in November  
 3 2017 set out to test the hypothesis that “among first-time felons, punitive sanctions will more  
 4 effectively reduce recidivism than will less severe sanctions.” *See* Daniel P. Mears, Joshua C.  
 5 Cochran, “Progressively Tougher Sanctioning and Recidivism: Assessing the Effects of Different  
 6 Types of Sanctions,” *Journal of Research in Crime and Delinquency*, Nov. 14, 2017, p. 1.<sup>10</sup> The  
 7 study looked at recidivism rates—defined as a new felony conviction within three years of  
 8 sentencing—for all first time felons convicted in Florida state court between 1994 and 2008. *Id.* at p.  
 9 9-10. The research found that first time felons sentenced to probation were “associated with less  
 10 recidivism than the more severe sanction alternatives” of jail or prison. *Id.* at p. 24. The authors  
 11 concluded “that probation and intensive probation are more effective than jail or prison, respectively,  
 12 in reducing offending among first-time felons. *Id.*

13       This data makes clear there is no need to impose additional jail time on Mr. Shafi to deter him  
 14 from committing a crime. Placing him on supervised release—which is effectively “intensive  
 15 probation”—will be more effective than additional jail time at keeping Mr. Shafi a law abiding  
 16 member of society.

17       **3. This Court Already Determined Mr. Shafi is not a Danger to the Community When  
 18 it Released Him on Bail in October 2018.**

19       When this Court released Mr. Shafi from custody in October 2018, it necessarily determined  
 20 Mr. Shafi was not a danger to the community. The Bail Reform Act mandates release of a person  
 21 pending trial unless a court finds the person a flight risk or a danger to the community. 18 U.S.C. §  
 22 3142(b). If there is probable cause a defendant committed a terrorism offense, there is a rebuttable  
 23 presumption the person should be detained. 18 U.S.C. § 3142(e)(3)(C). When a defendant proffers  
 24 evidence to rebut the presumption, a court must assess: (1) the nature and circumstances of the  
 25 offense; (2) the weight of the evidence; (3) the history and characteristics of the person; and (4) the  
 26 nature and seriousness of the danger to any person or the community posed by the person’s release.

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27  
 28 <sup>10</sup> The full article is available at  
<http://journals.sagepub.com/doi/abs/10.1177/0022427817739338?journalCode=jrca>.

1       *United States v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008); *see also* 18 U.S.C. § 3142(g).

2           When Mr. Shafi was ordered detained by the magistrate judge in 2015 and this Court in 2016, it  
 3 was on the basis of risk of flight, not because he was a danger to the community. *See* Dkt. 27 at  
 4 30:17-24 (“I think the risk of flight is actually what I’m most concerned about.”); Dkt. 53 at 9:15-17  
 5 (“the issue that I am most concerned about and I don’t know that—it’s a hard one to address, is the  
 6 flight risk”); 29:23-24 (“So I’m going to affirm what Judge Kim determined. Mr. Shafi, I do think  
 7 you’re a flight risk.”); Dkt. 41 (“the Court concludes that he is a flight risk and that despite the  
 8 combination of monitoring conditions proposed by his counsel, he should be detained.”).

9           When this Court released Mr. Shafi in October 2018, he still faced charges qualifying as a  
 10 terrorism offense under § 3142(e)(3)(C). Thus, Mr. Shafi could only be released if the Court  
 11 determined there were release conditions that could mitigate any risk of flight or danger to the  
 12 community. This Court obviously found there were sufficient conditions that could mitigate risk of  
 13 flight, which was the basis for detaining Mr. Shafi in the first place. By releasing Mr. Shafi, this  
 14 Court necessarily found Mr. Shafi was not a danger to the community.<sup>11</sup> Nothing has happened in  
 15 the six months since then that upsets that conclusion. That means there is no need to impose  
 16 additional time in jail to protect the public.<sup>12</sup>

17       **C. Providing Training, Medical Care or Other Treatment.**

18           “The underlying purposes of sentencing include not only punishment and deterrence, but also  
 19 the provision of treatment to a defendant in need of it.” *United States v. Bad Marriage*, 392 F.3d  
 20 1103, 1114 (9th Cir. 2004) (citing 18 U.S.C. § 3553 (a)(2)(D)). But Congress has cautioned courts to  
 21 recognize that “imprisonment is not an appropriate means of promoting correction and  
 22 rehabilitation.” 18 U.S.C. § 3582(a). Instead, “Congress intended supervised release to assist  
 23 individuals in their transition to community life. Supervised release fulfills rehabilitative ends,

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24  
 25  
 26       <sup>11</sup> Similarly, this Court rejected the government’s request before trial to take “protective measures”  
 27 with the jury, as the government acknowledged Mr. Shafi “has not attempted to interfere with the  
 judicial process or witnesses.” *See* Dkt. 225 at 21.

28       <sup>12</sup> Relatedly, the PSR incorrectly claims Mr. Shafi is a person whose release is restricted under 18  
 U.S.C. § 3143 and therefore not a good candidate for voluntary surrender. PSR Sentencing Rec. at 4.  
 The probation officer has acknowledged this was error.

1 distinct from those served by incarceration.” *United States v. Johnson*, 529 U.S. 53, 59 (2000) (citing  
 2 18 U.S.C. § 3553(a)(2)(D)). Thus, the Supreme Court has explained a court determining the length  
 3 of a prison sentence “should consider the specified rationales of punishment *except for* rehabilitation,  
 4 which it should acknowledge as an unsuitable justification for a prison term.” *Tapia*, 564 U.S. at  
 5 327.

6 Since his release from custody in October 2018, Mr. Shafi has been attending weekly  
 7 counseling sessions at the East Bay Community Recovery Project in Hayward. He told the probation  
 8 officer that the counseling “has benefited him greatly” and he has “interest in continuing this  
 9 treatment going forward.” PSR ¶ 45. He explains in his letter to the Court that the counseling  
 10 services have “help[ed] me better understand and manage my emotions” and he now “see[s] the flaws  
 11 of my past hopelessness and will now strive to use the life and opportunities given to me to make the  
 12 world a better place.” Exh. A, Adam Shafi Letter at 3-4. Thus, the best way to ensure Mr. Shafi  
 13 continues with this treatment plan is to sentence him to time served and place him on supervised  
 14 release immediately so he can continue with his counseling program at EBCRP.

15 **D. The Guidelines Sentencing Range and Sentencing Commission Policy Statements.**

16 Mr. Shafi agrees with the advisory Guidelines range calculated in the PSR. The base offense  
 17 level is 7 under U.S.S.G. § 2B1.1(a)(1). PSR ¶ 20. Because Mr. Shafi pleaded guilty and expressed  
 18 remorse for his actions, he receives a two level reduction for acceptance of responsibility under  
 19 U.S.S.G. § 3E1.1(a). PSR ¶ 27. The adjusted offense level is 5. PSR ¶ 28. Mr. Shafi is a first  
 20 offender with no criminal record, and so he has 0 criminal history points and is in criminal history  
 21 category I. PSR ¶¶ 32-33. He thus falls within Zone A of the Sentencing Table, facing an advisory  
 22 Guideline range between 0-6 months. PSR ¶ 58.<sup>13</sup>

23 Application note 4 to U.S.S.G. § 5C1.1 states “If the defendant is a nonviolent first offender  
 24 and the applicable guideline range is in Zone A or B of the Sentencing Table, the court should  
 25 consider imposing a sentence other than a sentence of imprisonment, in accordance with subsection

27 <sup>13</sup> Mr. Shafi intends to file a reply to the government’s sentencing memorandum to explain why the  
 28 terrorism enhancement in U.S.S.G. § 3A1.4 does not apply and, alternatively, why this Court should  
 use its discretion under *Kimbrough v. United States*, 552 U.S. 85 (2007) to reject the enhancement  
 even if it does apply.

1 (b) or (c)(3)." Mr. Shafi is a nonviolent first offender, and the applicable Guideline range is in Zone  
 2 A.<sup>14</sup> Thus, the Guidelines encourage the imposition of a noncustodial sentence. Of course, Mr. Shafi  
 3 has already spent 40 months in custody in this case. So while he cannot receive the benefit of a  
 4 noncustodial sentence, Application Note 4 supports a time served sentence as opposed to a sentence  
 5 with additional incarceration.

6 **E. Avoiding Unwarranted Sentencing Disparities.**

7 While the Court must avoid unwarranted sentencing disparities among defendants with similar  
 8 records convicted of similar conduct, the Ninth Circuit has explained sentencing courts must also  
 9 "avoid 'unwarranted similarities among [defendants] who were not similarly situated.'" *United*  
 10 *States v. Amezcua-Vasquez*, 567 F.3d 1050, 1058 (9th Cir. 2009) (quoting *Gall*, 552 U.S. at 55  
 11 (emphasis and brackets in original)); *see also* 18 U.S.C. § 3553(a)(6).

12 A time served sentence avoid unwarranted sentencing similarity and disparity. The  
 13 government claims the average sentence in attempted travel cases is 13.4 years. Dkt. 351 at 15. How  
 14 it gets that number is an utter mystery. It notes that according to statistics compiled by the George  
 15 Washington University Center on Extremism, 177 citizens were arrested on ISIS-related charges, 50  
 16 involved travel or attempted travel, and 38 have been adjudicated. Dkt. 351 at 15. It is unknown  
 17 which 38 cases the government is relying on to get to 13.4 years.

18 What is clear is that there are attempted and actual travelers who receive significantly shorter  
 19 sentences than 13.4 or even 10 years as recommended by the government. For example, one case  
 20 referenced on the George Washington site is that of Bilal Abood, who was sentenced in the Northern  
 21 District of Texas to four years in prison for making a false statement to a federal agency in violation  
 22 of 18 U.S.C. § 1001. *See United States v. Abood*, CR 15-256-K (N.D. Tex.). At first blush, that is  
 23 not a traveler case and it is unclear whether the government is using that case in calculating its  
 24 average sentence. Reviewing the complaint indicates that Abood admitted to the FBI he had

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25  
 26 <sup>14</sup> Application note 4 defines "nonviolent first offender" as "a defendant who has no prior convictions  
 27 or other comparable judicial dispositions of any kind and who did not use violence or credible threats  
 28 of violence or possess a firearm or other dangerous weapon in connection with the offense of  
 conviction." Mr. Shafi has no record, did not use violence and did not possess a firearm or other  
 destructive device. Any threat of violence made by Mr. Shafi in the intercepted phone calls was  
 clearly not credible as the government did not arrest him until he tried to fly to Istanbul.

1 travelled to Syria through Turkey in order to fight with the Free Syrian Army (“FSA”), attended a  
 2 FSA training camp, had recorded a videotaped allegiance to Abu Bakr al-Baghdadi, the head of ISIS,  
 3 that he posted on Twitter, and then lied about all of this to the FBI. *See United States v. Abood*, CR  
 4 15-256-K (N.D. Tex.), Dkt. 1, Complaint. Mr. Shafi did not do anything similar to this conduct and  
 5 should not be equated with a defendant who did, which supports a time served sentence.

6 A more comparable case from this district is *United States v. Natsheh*, CR 16-166-RS. There,  
 7 the defendant came to law enforcement attention when he posted pro-ISIS social media messages.  
 8 *See United States v. Natsheh*, CR 16-166-RS, Dkt. 20, United States’ Sentencing Memorandum at 2.  
 9 Weeks after he had been interviewed by the FBI, a law enforcement agency in Spain alerted the FBI  
 10 that a Spanish national was communicating with Natsheh about travelling from Spain to Turkey in  
 11 order to join ISIS. *Id.* at 3. Several days later, Natsheh was arrested at SFO attempting to fly to  
 12 Istanbul via Amsterdam. He admitted to the FBI that he intended to fly to Syria to fight with ISIS.  
 13 Natsheh pleaded guilty to attempting to provide material support to a terrorist organization, in  
 14 violation of 18 U.S.C. § 2339B. There was no dispute to the Guideline range, which included the §  
 15 3A1.4 terrorism adjustment, resulting in a Guideline range of 360 months to life and a statutory  
 16 maximum of 20 years, although Natsheh had no prior criminal record. *See United States v. Natsheh*,  
 17 CR 16-166-RS, Dkt. 26, Reporter’s Transcript of Proceedings on December 13, 2016 at 3:15-25. The  
 18 probation office recommended 20 years, the government recommended 15 years. *Id.* at 4:1-5. Judge  
 19 Seeborg imposed a 60 month sentence, explaining “the terrorism enhancement and the statutory  
 20 maximum, I think, are intended for very different cases than we have here.” *Id.* at 31:16-17.

21 A time served sentence for Mr. Shafi would avoid unwarranted sentencing similarity and  
 22 disparity with the sentence in Natsheh. It would take into account the fact that Mr. Shafi was not  
 23 convicted of attempting to provide material support to a terrorist organization in violation of §  
 24 2339B, the significantly lower Guideline calculations recommended by both the probation office (0-6  
 25 months) and the government (168-210 months) compared to those in Natsheh, and the shorter  
 26 sentencing recommendations of both probation (60 months) and the government (120 months)

27  
 28

1 compared to their recommendations for Natsheh.<sup>15</sup>

2 **F. Providing Restitution.**

3 As the PSR recognizes, there is no request for restitution because there was no loss to the bank.  
 4 PSR ¶ 15.

5 **OBJECTION TO PROPOSED SUPERVISED RELEASE CONDITION #7**

6 Mr. Shafi objects to proposed special condition 7 of supervised release, which orders Mr. Shafi  
 7 to “submit to periodic polygraph testing at the discretion of the probation officer as a means to ensure  
 8 that you are in compliance with the requirements of your supervision.” PSR Sentencing Rec. at 5.

9 The only justification given for this recommendation is that it “may assist the probation officer in  
 10 assessing the risk of Shafi accessing unauthorized computer devices and/or internet access” and “may  
 11 also prove helpful in assessing Shafi’s compliance with the no contact condition.” *Id.* at 4.

12 Although “District judges enjoy broad discretion in fashioning” supervised release conditions,  
 13 “Congress has nonetheless set limits on the exercise of that discretion.” *United States v. LaCoste*,  
 14 821 F.3d 1187, 1190 (9th Cir. 2016). There are “three primary constraints” on imposition of  
 15 supervised release conditions. *Id.* The condition must (1) “be reasonably related to the nature and  
 16 circumstances of the offense; the history and characteristics of the defendant; or the sentencing-  
 17 related goals of deterrence, protection of the public, or rehabilitation;” (2) be consistent with the  
 18 Sentencing Commission’s policy statements; and (3) must involve “no greater deprivation of liberty  
 19 than is reasonably necessary to serve the goals of supervised release.” *Id.* at 1190-91 (quotations and  
 20 citations omitted).

21 Polygraph testing is unnecessary here. Mr. Shafi, like every other defendant on supervised  
 22 release, is required to truthfully answer all questions asked by the probation officer. The vast  
 23 majority of defendants, however, are not required to submit to polygraph testing. The majority of  
 24 defendants convicted of bank fraud are not subject to polygraph testing; neither are defendants with  
 25 gang ties who are prohibited from associating with other gang members. Nor have the handful of

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27  
 28 <sup>15</sup> Mr. Shafi will provide more information about disparity in his separately filed reply to the  
 government’s sentencing memorandum in connection with his arguments against the § 3A1.4  
 terrorism adjustment.

1 defendants convicted of terrorism related charges in this district. *See, e.g., United States v. Natsheh,*  
 2 CR 16-166-RS (N.D. Cal.) Dkt. 24, Judgment at 4 (special conditions of supervised release require  
 3 no contact with members of ISIS but no polygraph testing requirement); *United States v. Llaneza*, CR  
 4 13-145-YGR (N.D. Cal.) Dkt. 34, Judgment at 3 (no polygraph testing as special condition of  
 5 supervised release); *United States v. Abdir*, CR 07-501-JF (N.D. Cal.) Dkt. 105, Judgment at 4  
 6 (special conditions of supervised release require no contact with co-defendant but no polygraph  
 7 testing requirement).

8 Any concerns about Mr. Shafi's online activity are adequately dealt with proposed supervised  
 9 release conditions 9 through 12, which require him to enroll in the Computer and Internet Monitoring  
 10 Program and authorizes probation to inspect his electronic devices. Proposed supervised release  
 11 condition 8 also requires Mr. Shafi to submit his electronic devices to a search for any reason to any  
 12 law enforcement officer. Mr. Shafi has no objection to these conditions, which are sufficient to  
 13 ensure Mr. Shafi is not having inappropriate contact with anyone.

14 Finally, even if this Court felt polygraph testing was necessary, the condition as written  
 15 involves a "greater deprivation of liberty than is reasonably necessary to serve the goals of supervised  
 16 release." *LaCoste*, 821 F.3d at 1190-91. Typically, polygraph testing is imposed in child  
 17 pornography and other sex offense cases as part of sex offender treatment. But the polygraph testing  
 18 condition typically makes clear the defendant retains his Fifth Amendment right to remain silent.  
 19 That is because the Ninth Circuit has explained that a "defendant retains his Fifth Amendment rights  
 20 during any such testing" and if a defendant "receives a question during his polygraph exam which  
 21 calls for him to provide an answer that would incriminate him in a future criminal proceeding, [he]  
 22 retains the right to invoke his Fifth Amendment privilege and remain silent. Should the government  
 23 desire [him] to answer, it may afford his answers the protection of use and derivative use immunity."  
 24 *United States v. Stoterau*, 524 F.3d 988, 1004 (9th Cir. 2008).

25 So for example, in *United States v. Henderson*, CR 15-565-WHO, this Court imposed a  
 26 polygraph testing condition that read as follows:

1 As part of the treatment program, the defendant shall submit to polygraph testing as  
2 recommended by the treatment provider. However, the defendant retains his Fifth  
3 Amendment right to refuse to answer questions asked during the course of treatment  
absent a grant of use and derivative-use immunity.

4 Dkt. 87, Amendment Judgment at 6. While Mr. Shafi does not believe polygraph testing is  
5 necessary, if this Court disagrees and imposes such a condition, it should make clear Mr. Shafi retains  
6 his Fifth Amendment right to refuse absent a grant of use and derivative-use immunity.

7 **CONCLUSION**

8 Mr. Shafi requests this Court sentence him to credit for time served, followed by three years of  
9 supervised release and a \$100 special assessment.

10 Dated: March 14, 2019

11 Respectfully submitted,

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14 Northern District of California

15 /S  
16 HANNI FAKHOURY  
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